Supreme Court, U.S.
FILED
AUG 26 1986
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 85-2158

In the Supreme Court of the United States

OCTOBER TERM, 1986

DALE BOWER AND RICHARD DAILEY, PETITIONERS

v.

RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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Petitioners are individuals who received credit from various private lending institutions that are members of the Farm Credit System. They challenge the court of appeals' holding that they lack standing to sue the federal respondents under the Administrative Procedure Act (APA), 5 U.S.C. (& Supp. III) 701 *et seq.*, for alleged violations of the Farm Credit Act.[1]

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[1]The federal respondents are the Secretary of Agriculture, the Farm Credit Administration, and the members and Chairman of the Farm Credit Administration Board. See Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, § 201(1), 99 Stat. 1688, 1689, 12 U.S.C. (Supp. III) 2242, 2244 (replacing Federal Farm Credit Board with Farm Credit Administration Board, and replacing the Governor of the former with the Chairman of the latter); Sup. Ct. R. 40.

Petitioners also challenge (Pet. I) the court of appeals' holding they have no implied private right of action under the Farm Credit Act of 1971, 12 U.S.C. (& Supp. III) 2001 *et seq.*, a holding that resulted in

1. Congress established the Farm Credit System in 1971 in order to "improv[e] the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services" (12 U.S.C. 2001(a)). The System is composed of a variety of farmer-owned cooperative lending institutions, such as federal land banks, production credit associations, and banks for cooperatives (12 U.S.C. (Supp. III) 2002). The institutions that belong to the System are regulated and supervised by the Farm Credit Administration, an independent Executive Branch agency that is governed by the Farm Credit Administration Board and its Chairman. Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, § 201(1), 99 Stat. 1688, 1689, 12 U.S.C. (Supp. III) 2241, 2243, 2244. The Administration is a regulatory agency and does not itself engage in any lending activities.

Petitioners brought this action in 1984 in the United States District Court for the Southern District of Ohio, naming as defendants the federal respondents and a number of Farm Credit System member institutions. Petitioners purported to represent a class of "American farmers * * * with farms at various locations throughout these United States" (Pet. App. A22, A23). With respect to the federal respondents, petitioners alleged numerous violations of the Farm Credit Act and sought review of those violations under the Administrative Procedure Act (*id.* at A24-A28). Petitioners alleged broadly that the "entire Farm Credit

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dismissal of their complaint against the nonfederal respondents. See Pet. App. A2-A3, A8-A14. Because this latter holding has no direct effect upon the federal respondents, we do not address it. As the nonfederal respondents have noted, however, and as petitioners appear to concede, there is no conflict among the circuits on that question. *Smith* v. *Russellville Prod. Credit Ass'n*, 777 F.2d 1544, 1546-48 (11th Cir. 1985) (no private right of action exists under the Farm Credit Act); Federal Land Bank of Louisville et al. Br. in Opp. 4-6.

System * * * has failed" and that the federal respondents had "ignored and acted in direct contra-distinction to the avowed intent and purposes of the * * * Act" (*id.* at A16, A25). Petitioners made "sweeping generalizations * * * that the defendants have 'abused and misused' certain statutory powers and that the defendants have passed rules and regulations which 'are [not] consistent with the Farm Credit Act' " (*id.* at A16; see *id.* at A25-A26). Although petitioners "fail[ed] to allege in what manner the System is malfunctioning" (*id.* at A16), they asserted that the Farm Credit System was not operating as intended and that they have "suffered corresponding substantial injury and damages" (*id.* at A27).

The federal respondents moved to dismiss for lack of standing, failure to state a claim, and failure to meet the requirements for APA review. The district court granted the motion. Noting that petitioners' "all-out assault on the operation of the Farm Credit System" essentially seeks "to substitute the Court for the Administration as the supervisory body under the Farm Credit Act" (Pet. App. A17), the court concluded that petitioners "lacked standing to have their complaints against the federal defendants, specifically, and the Farm Credit System, generally, adjudicated by th[e] Court under the APA" (*id.* at A19). The court of appeals affirmed in a per curiam decision, finding the district court's analysis of the standing issue "persuasive" and specifically adopting that analysis as its own (*id.* at A3).

2. The court of appeals' decision is in accord with settled law and creates no conflict among the circuits. There is no basis for further review.

It is axiomatic that a threshold requirement in every federal lawsuit, including cases brought under the APA, is that the plaintiffs have standing to sue. To satisfy this constitutional "case or controversy" requirement, the complaint must, at a minimum, "allege personal injury fairly

traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). See *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99 (1979). In particular, the complaint must state facts sufficient to show that the injury complained of is fairly traceable to the unlawful action alleged. *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41 (1976). When a suit challenges government action, moreover, the standing requirement ordinarily bars wholesale attacks on an agency's overall operations, demanding that the complaint refer to "specifically identifiable Government violations of law." *Allen* v. *Wright*, 468 U.S. 737, 759 (1984); see *id.* at 759-761. The Constitution does not contemplate that the federal courts should become "virtually continuing monitors of the wisdom and soundness of Executive action" by undertaking, as if they were congressional oversight committees, generalized reviews of agency operations. See *Laird* v. *Tatum*, 408 U.S. 1, 15 (1972).

The district court properly found that petitioners here launched just the sort of generalized attack on the overall operations of the Farm Credit System that the standing doctrine forbids. Petitioners made sweeping allegations that the federal respondents had ignored the Farm Credit Act's intent, had abused and usurped powers, and had taken a host of unspecified actions inconsistent with the statute (Pet. App. A16). The district court rightly concluded (*id.* at A17) that the complaint asked for a broad judicial investigation into the operations of the Farm Credit Administration, relief that petitioners have no standing to demand of a federal court. Although petitioners assert that the district court "failed to grasp the amorphis [*sic*] concept

of 'standing' " (Pet. 18), the district court's ruling is fully in accord with the standing principles articulated by this Court.

Indeed, it is also clear that petitioners have identified no specific injury that is fairly traceable to the wrongs of which they complain. The complaint contained no description of petitioners' harm, asserting merely that they have suffered "substantial injury and damages" (Pet. App. A27). The petition for certiorari asserts that "the present agricultural depression has been caused by the overall failure of the Farm Credit System to implement the Farm Credit Act" (Pet. 5). But not only is this a " 'generalized grievance[],' pervasively shared and most appropriately addressed in the representative branches." *Valley Forge*, 454 U.S. at 475 (quoting *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975)). The injury petitioners allege is so vague, and the conduct of which they complain is so unspecified, that their complaint falls far short of demonstrating the kind of cause-and-effect relationship that this Court's standing decisions demand.[2]

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[2]Petitioners' complaint did make a few allegations of a less generalized nature, such as the contention that the federal respondents "fail[ed] to make [adequate] annual reports to Congress" and "prescrib[ed] and approv[ed] by-laws and regulations that are not consistent with the * * * Act" (Pet. App. A26). Yet these allegations likewise afford no standing. For example, petitioners failed to identify the challenged by-laws and regulations (see *id.* at A26-A27), and did not explain how the Board's asserted failure to file proper annual reports—reports that have in fact been filed annually with Congress—could have caused them any personal injury. Cf. *United States* v. *Richardson*, 418 U.S. 167 (1974). Indeed, petitioners nowhere explained how any of the Board's alleged violations caused them any injury.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1986